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Office Supreme Court, U.S.
FILED
OCT 13 1958
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 377.

HARTFORD ACCIDENT AND INDEMNITY COMPANY,
Petitioner,

v.

RESERVE LIFE INSURANCE COMPANY, GEORGE WASHINGTON LIFE INSURANCE COMPANY, PROFESSIONAL INSURANCE CORPORATION, BANKERS LIFE AND CASUALTY COMPANY, and J. EDWIN LARSON,
Respondents.

AMICUS CURIAE

BRIEF

Of Eugene Cook, Attorney General, in Behalf of the State of Georgia and in Support of Cross Petition for Certiorari Filed in the Above Captioned Case.

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ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

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BRIEF

Of Eugene Cook, Attorney General, in Behalf of the State of Georgia and in Support of Cross Petition for Certiorari Filed in the Above Captioned Case.

This brief is filed under the provisions of Rule 27-D of this Court in support of the cross petition of Hartford Accident and Indemnity Company, which for brevity will hereafter be referred to as "Hartford." Application for certiorari in the main case is now pending in this Court, No. 272. Reference to the statements of fact in the petition and cross petition for certiorari is respectfully made.

THE QUESTION OF PUBLIC INTEREST:

In addition to the grounds set forth in the cross petition, the Attorney General respectfully represents to the Court that the decision of the Court of Appeals reversing the dismissal of the Hartford as a party defendant in the case results in the extension of the jurisdiction of the District Court in Florida over the Insurance Commissioner of Georgia who had been dismissed as a party to the case.

This controversy is between insurance companies engaged competitively in the same line of business and the Insurance Commissioners of Georgia and Florida who are charged with partiality in their rulings. There has been much controversy and litigation between the plaintiff and Insurance Commissioner Cravey. These include two cases decided by the Supreme Court of Georgia. **Bankers Life and Casualty Company v. Cravey**, 208 Ga. 682, 69 S. E. 2d 87, and **Cravey v. Bankers**, 209 Ga. 274, 71 S. E. 2d 659. Also, **Bankers Life and Casualty Company v. Cravey**, 90 Ga. App. 113, 83 S. E. 2d ...., in which the effort of the insurance company to obtain a license without qualifying in accordance with the state regulations was denied by the Court of Appeals of Georgia.

Whether the Insurance Commissioner may be joined in an anti-trust suit which involves his rulings is extremely doubtful. This court in **Parker v. Brown**, 317 U. S. 341 at 351, said, "We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a State or its officers or agents from activities directed by its Legislature."

But the ruling in the case at bar goes much further. It confers jurisdiction in an anti-trust case where the only service is on a surety company in a distant state, whose only connection with the case is its suretyship on the official bond. Such an extension of jurisdiction should not be made by default, and an examination of the decision

of the Court of Appeals indicates that the defenses of the surety company though noted, were neither discussed nor ruled on, the reversal being based entirely on matters dealing with the other defendants. 257 F. 2d 377.[1]

I. THE BOND DOES NOT AUTHORIZE SUIT BY THIRD PERSONS.

The bond executed by Hartford is payable to the Governor of Georgia.[2]

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[1] The Court held that the evidence presented a genuine issue as to a material fact and the case could not properly be dismissed on summary judgment. (Determination of the issues raised by the cross petition does not involve an examination of the facts.) The Court discussed the contention of the Florida Commissioner that he was immune from accountability in this suit because of his official position, and held that such immunity would not exempt the Commissioners of Georgia and Florida from liability for a conspiracy to restrain commerce. So far as the Georgia Commissioner is concerned, this was pure dicta since he was not a party to the case. The points raised in this cross petition may be decided without reference to the voluminous record filed in the main case, No. 272.

[2] "Exhibit A."

Hartford Accident and Indemnity Company,
Hartford, Connecticut.

State of Georgia Bond No. 2305662

Bond of Comptroller General.

Know All Men By These Presents, That we, Zack D. Cravey, 1689 Johnson Road, N. E., Atlanta, Georgia, as Principal, and Hartford Accident and Indemnity Company, of Hartford, Connecticut, as Surety, are held and firmly bound unto the Governor of the State of Georgia, Honorable Herman Eugene Talmadge, and/or his successor, or successors, in office, in the just and full sum of Twenty Thousand and No/100 ($20,000.00) Dollars, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed With Our Seals And Dated this 6th day of December, 1950.

The Condition Of The Above Obligation Is Such, That, Whereas, the above bound Zack D. Cravey was, on the 7th day of November, 1950, duly and legally elected Comptroller General of the State of Georgia for the term of four (4) years beginning January 14, 1951.

Now, Therefore, should the said Zack D. Cravey faithfully discharge the duties of the office of Comptroller General of the State

II. THE PLAINTIFF AS A THIRD PERSON MUST RELY ON A STATUTE.[3]

A statutory remedy to enforce a right created by the same statute is exclusive, unless the statute clearly shows a contrary intention, C. J. S., § 5, Actions. Middletown N. Bank v. Toledo A. A. & N. M. RR Co., 197 U. S. 394.

The remedy is by suit in a court in Georgia and a suit on the bond in Florida will not lie. "The remedy must be pursued in the courts of that state." Middletown N. Bank case, supra, p. 406.

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of Georgia, during the time he continues therein, or discharges any of the duties thereof, then the above bond to be void; otherwise to be in full force and effect.

By /s/ Zack D. Cravey,
Principal.

Witnesses:
/s/ Frances L. Williams,
/s/ Helen L. Bryans,
As to Principal.

.....
.....
As to Surety.

Hartford Accident & Indemnity Co.,
By /s/ Agnes Chandler,
Attorney-in-Fact (Agnes Chandler).

Approved as to Form:
/s/ Eugene Cook,
Attorney General.

Attested and Approved by Me This 17 day of Jan., 1951.
/s/ Herman E. Talmadge,
Governor of the State of Georgia.

[3] Ga. Code, § 80-420. Actions on bonds; persons who may bring; jurisdiction.—Suits on bonds taken from public officers may be brought by any person aggrieved by the official misconduct of the officer, in his own name, in any court having jurisdiction thereof, without an order for that purpose. (Acts 1853-4, p. 57.)

Ga. Code, § 20-1403. Penalties.—Penalties in bonds are not liquidated damages; and even if called such, yet, if it appears unreasonable and not so actually intended by the parties, the law will give only the actual damages, and in all cases where the damage is capable of computation, and is not uncertain in its character, such stipulations will be declared to be penalties.

The Georgia statute provides that suit may be instituted in any court having jurisdiction thereof, but clearly this means any Court in Georgia. Third party rights arise only from official duties, and these duties are necessarily performed within the state. This court has held that other remedies are impliedly excluded. Compare **Shriver v. Woodbine Savings Bank**, 285 U. S. 467 at 478.[4] **"The statute increasing the beneficiaries under the bond to third persons provides for suits on bonds."** (Emphasis ours.) By no stretch of the imagination can these complex proceedings be termed a suit on the bond.

III. THE PETITION SETS FORTH NO CLAIM FOR THE RECOVERY OF DAMAGES ARISING OUT OF A BREACH OF THE CONDITIONS OF THE BOND.

Plaintiff's only claim (par. 33, Complaint R.) is for the recovery of the penalty of the bond, "since Hartford is firmly bound to pay to this plaintiff up to that amount for any damages found to have been inflicted by said defendant, Zack D. Cravey, due to his illegal acts as aforesaid."

The statute does not provide for recovery of this class of damages, and no specific damages within the ambit of the statute are sued for.

The Court of Appeals has construed the petition as a suit for personal dereliction beyond the duties of the office, 257 F. 2d 377. For such actions, the surety on the bond is not liable. "His conduct was a mere usurpation where he

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[4] This Court on three occasions has considered statutes authorizing suits "in any court of competent jurisdiction" and held that where the fiscal position of the state is involved, this phrase will be limited to courts of the state, excluding suit in the Federal court. *Northern Life Ins. Co. v. Reed*, 322 U. S. 47, 64 S. Ct. 873, 88 L. Ed. 1121; *Ford Motor Company v. Treasury Dept.*, 323 U. S. 459, 89 L. Ed. 389; *Kennecott Copper Co. v. State Tax Commissioner*, 327 U. S. 573-580, 66 S. Ct. 745, 90 L. Ed. 862. A recovery by a third person necessarily diminishes the security of the state, its law provides, § 89-422. "Official bonds of public officers should not be discharged by single recovery but proceedings may be had from time to time until the whole penalty is exhausted against the officer and his sureties or either."

had no authority to act at all in the matter. Where an officer commits a wrong under circumstances in which the law imposes no duty upon him to act at all, the wrong is personal and not a breach of the official bond." **Fidelity and Deposit Co. v. Smith**, 37 Ga. App. 744, 141 S. E. 672.

ARGUMENT.

For nearly 100 years the courts, State and Federal, have enforced "a public policy designed to protect the public officials from undue harassment by civil litigation for acts committed by law to their control or supervision, and within the scope of their duties and authority." **DeBusk v. Harvin**, 212 F. 2d 143 (Fifth C. C. A.). The same court in the ruling complained of here abandons this long standing rule and subjects a public official to a lengthy trial with other defendants, burdening him with absences from his official duties and liability for great expense, and it does so in his absence and by virtue of service on a surety company whose bond does not cover the principal issues in the case.

The judgment dismissing Hartford was reversed because a summary judgment was not deemed applicable. But this Court has suggested the desirability of summary judgment proceedings on complex and involved anti-trust cases to avoid an expensive full dress trial. **U. S. v. Employing Plasterers Assn.**, 347, U. S. 186, at 189.

For none of the reasons stated in the decision of the Court of Appeals was the summary judgment in favor of the Hartford erroneous. This Court should grant the cross petition for certiorari, reverse the judgment of the Court of Appeals and restore the judgment of the District Court dismissing the Hartford from the case.

Respectfully submitted,

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